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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	06/09/2001	George Michael Mockry	530.005PA	8653
7590	11/28/2007		EXAMINER	
KENTON L. FREUDENBERG P.O. BOX 841 DURANGO, CO 81302			ART UNIT	PAPER NUMBER

DATE MAILED: 11/28/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**  
**After the Filing of an Appeal Brief**

<b>Application No.</b> 09/878,860 <b>Examiner</b> Mike Chambers	<b>Applicant(s)</b> MOCKRY ET AL. <b>Art Unit</b> 3711
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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

The reply filed 22 January 2007 is acknowledged.

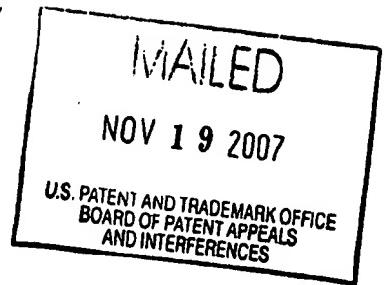
1.  The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:
    - a.  The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).
    - b.  The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).
  2.  The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.
- Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).
3.  The reply is entered. An explanation of the status of the claims after entry is below or attached.
  4.  Other: ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER for correction



EUGENE KIM  
 SUPERVISORY PATENT EXAMINER

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



Ex parte: GEORGE MOCKRY AND GREGORY MOCKRY

Application No. 09/878,860

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

**APPEAL BRIEF**

Appellant filed an Appeal Brief dated January 22, 2007, in response to the Notification of Non-Compliant Appeal Brief mailed November 14, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

37 CFR § 41.37(c) states in part in part:

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the

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specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The "Status of Claims" section does not properly identify the appealed claims.

The "Summary of claimed subject matter" appearing on page 2 of the Appeal Brief filed January 22, 2007, is deficient because it does not map independent claims 22, 24, 35 and 38 to the specification.

### **CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed January 22, 2007, defective;
- 2) notify the appellant to submit a Supplemental Appeal Brief which corrects the Appeal Brief, Status of Claims under 37 § 41.37(c)(1)(iii), Summary of Claimed Subject Matter under 37 § 41.37(c)(1)(v) and Grounds of Rejection to be Reviewed on Appeal;
- 3) acknowledgement and consideration of any Supplemental Appeal Brief that may be submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v); and

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4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

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PJN/tsj

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